

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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CG TECHNOLOGY DEVELOPMENT, LLC, *et al.*,

Plaintiffs,

vs.

888 HOLDINGS PLC,

Defendant.

2:16-cv-00856-RCJ-VCF

*Consolidated with:*

2:16-cv-00871-RCJ-VCF

**ORDER**

MOTION FOR CLARIFICATION (ECF No. 106)

Before the Court is Plaintiffs CG Technology Development LLC, Interactive Games Limited, and Interactive Games LLC's Motion for Clarification. (ECF No. 106). For the reasons stated below, Plaintiffs' motion is denied.

**I. Background**

On July 25, 2017, Defendants in seven consolidated cases—FanDuel, Bwin.Party Digital Entertainment, Bwin.Party (USA), Bwin.Party Entertainment (NJ), Big Fish, 888 Holdings, Zynga, and DraftKings—filed a joint motion to compel discovery against Plaintiffs. (2:16-cv-00801-RCJ-VCF, ECF No. 214). The motion asked, among other discovery requests not at issue, “that the Court compel Plaintiffs to admit or deny the priority date of each of the asserted patents” as stated in FanDuel's requests for admission. (*Id.* at 2, 4). Plaintiffs had previously denied the priority dates, stating they “lack[ed] sufficient information at this time to admit or deny” the requests. (ECF No. 214-3).

On July 27, 2017, several of the consolidated cases were transferred to different districts. (2:16-cv-00856-RCJ-VCF, ECF No. 58). Notably, FanDuel is no longer a defendant in the cases now before the Court. The joint motion to compel was transferred to 2:16-cv-00856-RCJ-VCF (ECF No. 79), and the remaining Defendants are 888 Holdings and the Bwin entities.

1 On August 8, 2017, Plaintiffs filed a response to Defendants' motion to compel. (ECF No. 69).  
2 Plaintiffs argued they had properly responded to the requests for admission because "Defendants[] chose  
3 to serve requests for admission before any deposition discovery or third-party discovery had been  
4 conducted in these cases." (*Id.* at 13-14).

5 On September 6, 2017, the Court issued an order granting Defendants motion to compel discovery.  
6 (ECF No. 101). The Court found that "Plaintiff's responses to Defendants' requests for admission are  
7 deficient" considering the discovery done in the case and "ordered that...Plaintiffs must serve on  
8 Defendants supplemental responses to Defendants' requests for admission No. 1 through No. 4." (*Id.* at  
9 5-6).

10 On September 13, 2017, Plaintiffs filed a Motion for Clarification regarding the Court's order.  
11 (ECF No. 106). Plaintiffs argued for the first time that the requests for admission were moot because  
12 FanDuel had been removed from the case, and the current Defendants had not joined in the requests. (*Id.*  
13 at 1-2). In response, Defendants argue the Motion for Clarification actually seeks reconsideration based  
14 on an argument Plaintiffs waived by failing to raise it in their opposition to the motion to compel. (ECF  
15 No. 111 at 2). Defendants also assert that the requests for admission are properly before the Court because,  
16 despite not joining in the requests, Defendants joined in the motion to compel that included a discussion  
17 of the requests. (*Id.*)

## 18 **II. Motion for Clarification**

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20 As an initial matter, Plaintiffs' Motion for Clarification does not ask for clarification. The Court  
21 spent more than a page analyzing the issue before specifically ordering that "Plaintiffs must serve on  
22 Defendants supplemental responses to Defendants' requests for admission No. 1 through No. 4." (ECF  
23 No. 101 at 5-6). In order for the Court to now conclude that Plaintiffs do not need to respond to the  
24 requests for admission, the Court would have to reconsider its order, not clarify it.  
25

1 “A party seeking reconsideration...must state with particularity” the grounds for reconsideration.  
2 LR 59-1(a). “Reconsideration may be appropriate if a district court: (1) is presented with newly  
3 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) there  
4 has been an intervening change in controlling law.” *Rich v. TASER Int’l, Inc.*, 917 F. Supp. 2d 1092, 1094  
5 (D. Nev. 2013) (*quoting Petrocelli v. Baker*, 3:94–CV–0459–RCJ–VPC, 2011 WL 4737061 (D. Nev. Oct.  
6 5, 2011)). New arguments on reconsideration that a party failed to raise earlier are deemed waived. *See*  
7 *United States v. \$998,830.00 in U.S. Currency*, No. 2:09-CV-0086-KJD-GWF, 2011 WL 830952, at \*2  
8 (D. Nev. Mar. 4, 2011); *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).

9 The Court finds no basis to reconsider its order granting Defendants’ motion to compel. It is clear  
10 that there has been no newly discovered evidence or a change in controlling law. The Court did not  
11 commit a clear error or reach a manifestly unjust decision. Plaintiffs failed to raise the issue of whether  
12 the requests for admission were potentially moot due to FanDuel’s removal from the case during their  
13 opposition to the motion to compel. The mootness argument was fully available to Plaintiffs at the time  
14 they filed their response to the motion to compel—the only requests for admission at issue in the motion  
15 to compel were those served by FanDuel, and FanDuel had already left this case. Because Plaintiffs failed  
16 to raise this issue earlier, Plaintiffs have waived this argument on reconsideration.

17  
18 ACCORDINGLY, and for good cause shown,

19 IT IS HEREBY ORDERED that Plaintiffs’ Motion for Clarification (ECF No. 106) is DENIED.

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1 IT IS FURTHER ORDERED that, on or before October 11, 2017, Plaintiffs must serve on  
2 Defendants supplemental responses to Defendants' requests for admission No. 1 through No. 4.

3 IT IS SO ORDERED.

4 DATED this 5th day of October, 2017.

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7 CAM FERENBACH  
8 UNITED STATES MAGISTRATE JUDGE  
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